

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/581,444  
Applicant : Matthias WITSCHER et al  
Filed : June 2, 2006  
TC/A.U. : 1626  
Examiner : Kristin A. Bianchi

Docket No. : 3165-146  
Customer No. : 6449  
Confirmation No.: 6606

**RESPONSE TO RESTRICTION REQUIREMENT/ELECTION OF SPECIES**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the office action dated November 4, 2008, the applicants hereby elect Group I, namely claims 1-5, 9, 10 and 15, drawn to compounds and compositions of formula I. This election is with traverse, as the restriction is improper under the PCT Rules.

Attached is a copy of the PCT Gazette, Section IV, No. 24/1996, page 9486, which indicates that under the PCT Rules Unity of Invention is found if the chemical structures of the intermediates and the final product are technically closely interrelated. This is illustrated in the attached page from the PCT Gazette, and it will be noted that the relationship between the illustrated intermediate and final products is even further apart than found in the present case. The Examiner has pointed to one location where the compounds of Formula I differ, but that substituent on the carbonyl carbon is the only location where the compounds of Formula I and Formula III differ, with the remaining portion of the respective compounds being of the same core structure. Accordingly, it is believed in order to

withdraw the Restriction Requirement between Groups I and III. Group II is directed to a process for preparing the compounds of Formula I, and Group IV is directed to the method of using the compounds of Formula I, and again the Groups II and IV are linked to Group I, and it is noted that the Examiner has advanced no reasons why restriction should be required among these three groups of claims. Accordingly, since the Examiner has not carried her burden of establishing the lack of a single general concept between the respective Groups, the restriction between Groups I, II and IV should also be withdrawn.

The Examiner's comments with respect to possible rejoinder between the product and process claims are noted with appreciation.

Finally, the Examiner has required an election of a single disclosed species within the elected Group. The applicants elect Compound 3.6, which will be found in Table 3, appearing at page 90 of the specification. The structure of the elected species is shown in the Table in association with the structural formula appearing immediately above the Table. All claims except claim read 8 on the elected species.

Withdrawal of the Restriction Requirement as to all Groups, and early and favourable action on the merits, is requested.

Respectfully submitted,

By



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RBM/cb  
Enclosure

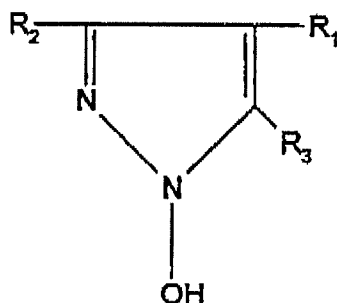
Both catalysts share a common component and a common activity as oxidation catalyst for  $RCH_3$ . With  $(X + a)$  the oxidation is more complete and goes until the carboxylic acid is formed but the activity still remains the same.

A Markush grouping is acceptable.

#### IV. INTERMEDIATE/FINAL PRODUCTS

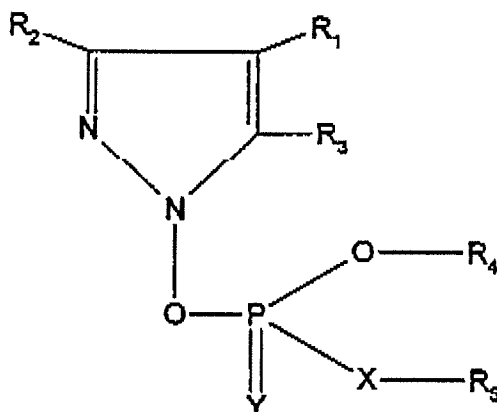
##### Example 25

Claim 1:



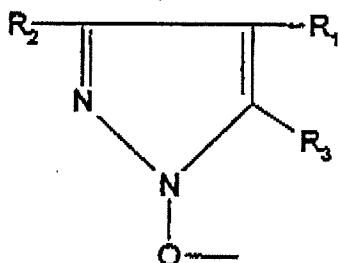
(intermediate)

Claim 2:



(final product)

The chemical structures of the intermediate and final product are technically closely interrelated. The essential structural element incorporated into the final product is:



Therefore, unity exists between claims 1 and 2.